



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFL MNDCL-S OPC

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- an Order of Possession pursuant to section 55; and
- a monetary order for money owed or compensation for damage or loss under the tenancy agreement in the amount of \$111 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord was assisted by a translator.

The landlord testified, and the tenant confirmed, that the landlord served the tenant with the notice of dispute resolution form and supporting evidence package. I find that the tenant has been served with these documents in accordance with the Act.

The tenant did not enter any documents into evidence.

Preliminary Issue – Service of One Month Notice to End Tenancy (the "**Notice**")

The landlord issued the Notice on September 13, 2019. She testified she sent it by registered mail to the rental unit. The tenant testified that she did not receive the Notice, as she does not live at the rental unit. The landlord acknowledged that this was the case (the reason the landlord listed for issuing the Notice was that the tenant has sublet the rental unit without her consent).

The landlord testified that after she sent the Notice to the rental unit, she texted the tenant asking if the tenant had received the Notice. She testified that the tenant responded that she had not.

The tenant testified that she first received a copy of the Notice when she was served with the landlord's evidence package for this application.

Section 88 of the Act sets out how service of notices to end tenancy may be made:

How to give or serve documents generally

88 All documents, other than those referred to in section 89, that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

[...]

(c) by sending a copy by ordinary mail or registered mail to the address at which the person *resides* or, if the person is a landlord, to the address at which the person carries on business as a landlord;

[emphasis added]

I find that the tenant does not reside at the rental unit. As such, I find that the landlord has not served the tenant with the Notice in accordance with the Act. Therefore, I dismiss the landlord's application, with leave to reapply.

As the tenant has acknowledged that she has received the Notice as part of the evidence package, I find that it is unnecessary for the landlord to re-serve the tenant with the Notice. Instead, pursuant to section 71(2)(b), I find that the Notice is deemed to have been served on the date of this hearing (November 07, 2019).

For additional clarity, the ten-day period in which the tenant may dispute the Notice (as provided by section 47(4)) starts running on November 07, 2019.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 07, 2019

Residential Tenancy Branch